

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 310****[Docket ID: DoD-2021-OS-0088]****RIN 0790-AL42****Protection of Privacy and Access to and Amendment of Individual Records under the Privacy Act of 1974; Technical Amendment****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

SUMMARY: DoD is making a technical amendment to reinstate an appendix to its Privacy Program regulation that was erroneously deleted when the regulation was previously revised. The appendix contained a list of blanket routine uses that are included by reference in many DoD Privacy Act systems of records notices (SORNs).

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Kirby, OSD.DPCLTD@mail.mil; (703) 571-0070.

SUPPLEMENTARY INFORMATION: This final rule amends 32 CFR part 310, “Protection of Privacy and Access to and Amendment of Individual Records under the Privacy Act of 1974,” to reinstate DoD’s blanket routine uses. The appendix which enumerated DoD’s blanket routine uses was erroneously removed when 32 CFR part 310 was revised on April 11, 2019 (84 FR 14728-14811).

A “routine use” is defined in the Privacy Act as “with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.” *See* 5 U.S.C. 552a(a)(7). Routine uses are included in individual agency SORNs

to allow the agency to disclose records from a particular system of records to individuals or entities in accordance with the terms of the routine use. Some agencies have established a set of routine uses that apply to a wide array of published agency SORNs, sometimes referred to as blanket routine uses. Their purpose is to provide consistent information sharing authority across the SORNs for common or non-controversial purposes. Examples of routine uses that are typically included in blanket routine uses are ones that allow agencies to share information with members of Congress inquiring on behalf of a constituent, with the Department of Justice when litigation arises, and with agency contractors for purposes outlined in the contract.

DoD had previously published a list of 14 blanket routine uses in an appendix to a prior publication of the DoD Privacy Program regulation on April 13, 2007 (72 FR 18758). In the 2019 update, all appendices to the prior regulation were removed; however, the appendix containing the DoD blanket routine uses (appendix C) should have remained because numerous DoD SORNs refer to and incorporate the blanket routine uses to support necessary information sharing. This technical amendment seeks to remedy this error by restoring the blanket routine uses as appendix A to part 310. This will provide clear public notice of the existence and ongoing use of the blanket routine uses at DoD. A list of DoD's blanket routine uses has also continued to be available on the DoD Privacy Program website since the DoD Privacy Program regulation was published in 2019.

REGULATORY ANALYSIS

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action.

Congressional Review Act

This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Section 202, Public Law 104-4, “Unfunded Mandates Reform Act”

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that it will not significantly or uniquely affect small governments.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)

The Director of Administration and Management certified that this rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the DoD.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose information collection or record keeping requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Executive Order 13132, “Federalism”

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”

It has been determined that this rule does not have a substantial effect on Indian tribal governments. This rule does not impose substantial direct compliance costs on one or more Indian tribes, preempt tribal law, or effect the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

**PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDMENT OF
INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974**

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Appendix A is added to read as follows:

APPENDIX A TO PART 310 – DOD BLANKET ROUTINE USES

A. Routine Use—Law Enforcement

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

B. Routine Use—Disclosure When Requesting Information

A record from a system of records maintained by a Component may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

C. Routine Use—Disclosure of Requested Information

A record from a system of records maintained by a Component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the

issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. Routine Use—Congressional Inquiries

Disclosure from a system of records maintained by a Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

E. Routine Use—Private Relief Legislation

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

F. Routine Use—Disclosures Required by International Agreements

A record from a system of records maintained by a Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements, including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

G. Routine Use—Disclosure to State and Local Taxing Authorities

Any information normally contained in Internal Revenue Service (IRS) Form W-2 which is maintained in a record from a system of records maintained by a Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C., sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of

whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76-07.

H. Routine Use—Disclosure to the Office of Personnel Management

A record from a system of records subject to the Privacy Act and maintained by a Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement reductions, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

I. Routine Use—Disclosure to the Department of Justice for Litigation

A record from a system of records maintained by a Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

J. Routine Use—Disclosure to Military Banking Facilities

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

K. Routine Use—Disclosure of Information to the General Services Administration

A record from a system of records maintained by a Component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

L. Routine Use—Disclosure of Information to the National Archives and Records

Administration

A record from a system of records maintained by a Component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

M. Routine Use—Disclosure to the Merit Systems Protection Board

A record from a system of records maintained by a Component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel, for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or Component rules and regulations, investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206 or as may be authorized by law.

N. Routine Use—Counterintelligence Purposes

A record from a system of records maintained by a Component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. law or Executive order or for the purpose of enforcing laws that protect the national security of the United States.

Dated: November 12, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.